

JAMES W. HEYER, Appellant
RAY NEWMAN, EDWARD W. HALSEY,
HAROLD L. ANDERSON, Appellees

IBLA 71-40 Decided June 2, 1971

Oil and Gas Leases: Applications: Drawings – Rules of Practice: Protests

A protest against omission of a drawing entry card from a drawing to determine priority of oil and gas lease offers submitted in response to a published list of lands available for leasing by the simultaneous filing procedure, and against issuance of a lease to the offeror gaining priority therein, is properly dismissed where it is not shown that the omitted offer was correctly filed.

Oil and Gas Leases: Applications: Generally

Where the appellant fails to show error in the decision by the Bureau of Land Management land office holding that an oil and gas lease offer was not correctly filed, and no error appears, the decision will be affirmed.

Rules of Practice: Generally – Notice

A document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

IBLA 71-40 : W 24747

JAMES W. HEYER,
Appellant

RAY NEWMAN, :
EDWARD W. HALSEY
HAROLD L. ANDERSON,
Appellees

: 24749
: 24750
:
: Protest against drawing
held in simultaneous
: oil and gas lease filing
: procedure dismissed
:
: Affirmed

DECISION

James W. Heyer has appealed to the Board of Land Appeals from a decision dated August 3, 1970, whereby the Wyoming land office, Bureau of Land Management, denied his protest against the drawings held July 7, 1970, for parcels 56, 57, 58 and 59 in the simultaneous filing procedure for June 1970. The land office did not accept drawing entry cards submitted by Heyer because it claimed they were not accompanied by the filing fees required by 43 CFR 3112.2-1(a)(2), 35 F.R. 9692 (formerly 3123.9(c)(2) (1970)). Heyer's appeal relates only to the drawings for parcels 56, 58, and 59. He protested to the land office that the drawings were improper because his simultaneous oil and gas entry cards for each parcel had not been included, even though he had submitted such offers timely.

The appellant now contends that he transmitted in "at least one envelope" five simultaneous oil and gas entry cards properly completed for parcels 55, 56, 57, 58 and 59 in the June 1970 simultaneous list of the Wyoming land office, to each of which was attached a money order in the correct amount for the first year's advance rental. Also transmitted was a single personal check in the amount of \$50.00 for the required filing fees for five offers, identified as being for "five simultaneous filings for June Federal filing, Wyoming 55, 56, 57, 58, 59."

The assistant manager, Wyoming land office, concedes that the entry cards of Heyer for parcels 55, 56, 57, 58 and 59 were received within the time period specified in the June 1970 notice, but states that the envelope containing entry cards for parcels 56, 57, 58 and 59 did not contain any filing fee. The record contains a photocopy of an envelope from Heyer to the land office on which an employee had stamped "No filing fee" and a written assertion by land office personnel that the entry cards for parcels 56, 57, 58 and 59 were received in the envelope without filing fees attached. For this reason the cards were not placed in the appropriate drawings to determine the first qualified offeror for each parcel. The assistant manager, conceding that the land office had considered the \$50.00 check with the entry card for parcel 55 as a single filing fee, concludes that it must have been sent in a separate envelope.

The appellant offered to prove positively through documents and testimony from independent witnesses that all of his lease offers were mailed in the same envelope on June 19, 1970. By order of the Board of Land Appeals dated December 29, 1970, Heyer was accorded a 30-day period within which to submit such supplemental documentary evidence. A copy of the order sent to Heyer at his address of record by certified mail was returned January 25, 1971, with the notation "Unclaimed."

One who deals with the Department has an obligation to keep it informed of an address at which communications from the Department will reach him. 43 CFR 4.401(c)(3), 36 F.R. 7700 (formerly 43 CFR 1840.0-6(c), 35 F.R. 9522.) If the address given by him is faulty, he must bear the consequences. Kewanee Oil Company, 67 I.D. 305 (1960). A document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered, certified letter, such constructive service being equivalent in legal effect to actual service of the document. Duncan Miller, A-31054 (August 21, 1969); 43 CFR 4.401(c)(3) (formerly 43 CFR 1840.0-6(e)(3), 35 F.R. 9522.)

In accordance with his offer, Heyer was invited to submit the positive evidence he claimed to have in support of his appeal and has been allowed a substantial period of time within which to do so. But no documentary evidence or sworn testimony has been submitted. From his failure to respond to the Board's invitation, we must assume that Heyer does not have any positive evidence to refute the holding of the land office that his drawing

entry cards for parcels 56, 58 and 59 were received in the Wyoming land office without the required filing fees attached. We accept, therefore, as correct, the report of the Wyoming land office that the entry cards from Heyer for parcels 56, 58 and 59 in the June 1970 simultaneous filing procedure were received in a separate envelope without the required filing fees.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Newton Frishberg, Chairman

We concur:

Martin Ritvo, Member

Edward W. Stuebing, Member.

